

Check 21 Commentary Response from the Golden 1 Credit Union – Docket Number R-1176

1. The Golden 1 Credit Union suggests using “business day” for providing recredits and making funds available for a recredit. As the expedited recredit timelines are very close, if not the same, as Regulation E timeframes, we suggest keeping it consistent by using the same measurement standards which is “business day” under Regulation E.
2. The Federal Reserve Board is taking a leadership role with Check 21 and providing good service and good information by supplying sample notices in the appendix for the various situations regarding expedited recredit claims being valid, not valid or recredits being reversed. These samples give small financial institutions a guideline and also will encourage consistency in the information supplied to the consumer. Please keep the sample notices in the commentary.
3. The case-by-case disclosure for substitute checks should be provided to the accountholder at the time they receive a substitute check in response to their request for a check or copy. It will be relevant at that time and in their hands if they have questions. Providing it at the time the copy request is made will be confusing and irrelevant if they do not receive a substitute check.
4. The Golden 1 respectfully recommends the following changes to the consumer awareness notice:

Replace the word “refund” with “provisional credit”. “Refund” sounds like a permanent issuance of the funds when actually the financial institution may reverse it.

Replace the verbiage “amount that we owe” (see highlighted verbiage below) with “amount in question” or “amount of your claim”.

Our Responsibilities for Handling your Claim

We will investigate your claim promptly. If we conclude that we incorrectly charged your account, we will refund to your account the amount of your claim (up to the amount of the substitute check, plus interest if your account earns interest) within one business day of making that decision. If we conclude that we correctly charged your account, we will send you a notice that explains the reason for our decision and includes either the original check or a better copy of the original check that the one you already received. If we have not made a decision on your claim within 10 business days after you submitted it, we will refund the amount that we owe to your account, up to \$2,500, plus interest by that date. We will refund the remaining amount, if any, plus interest, to your account by the 45th calendar day after you submitted your claim.

5. The Board clarifies that the financial institution may reverse interest paid when reversing a recredit. This is a good stand to take as it eliminates individuals from taking advantage of the opportunity to receive funds they are not entitled to have. By having it in the commentary, financial institutions have regulatory support for an option to reverse unearned interest or not, depending on their philosophy. The final decision on reversing the interest should be the financial institution's. Additional commentary would be helpful on the reversal of an item that had already been determined to be valid. At what point can a consumer know that the money is theirs permanently?
6. Using the information from an original or substitute check to create an electronic entry specifically an ACH entry for that item should continue to be covered under Regulation E and NACHA rules.
7. A sufficient copy should be treated as a substitute check with the same warranty and indemnity rights for limited purposes. In many cases a sufficient copy can provide the information necessary to process a consumer claim, etc. (i.e. encoded for incorrect amount) and is readily available to complete the process or claim without having to go back and retrieve an original or substitute check.
8. Regarding the proposed endorsement and identification standards discussed in the commentary proposal, we see no improvement in the issues that exist today with super imposing over endorsements and not being able to follow the clearing trail.
9. Incorporating the UCC revision defining a remotely-created consumer item to mean "an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer", a paying bank could use a warranty claim to absolve itself of responsibility for honoring this type of item if a drawer claims it is unauthorized. Depositary banks should be responsible for the fraud coming through their institution and be familiar with their customers. Having liability for such fraud perpetration will encourage them to screen their business accounts and make fraud harder to commit.
10. Using existing industry standards makes perfect sense. This is what institutions are currently doing; it works, and will make upcoming changes easier to incorporate.